FILED

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No.

In The Supreme Court of The United States

October Term, 1996

Friedrich Lu
Petitioner

v.

Choate, Halls & Stewart, Michael H. Bunis, Kathleen M. Genova,
Tam Thi Ngo, Hong T.Nguyen,
Respondents

On Petition for Writ of Certiorari to the
United States Court of Appeals for the First Circuit

Petition for Writ of Certiorari

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47 pp

Questions Presented for Review

1. Can A Party Represent A Co-party Or Co-parties In A Lawsuit? Can A Party Who Is So Represented Further Represent A Co-Party In The Same Lawsuit?

2.

(a) Is Issuance of The Injunction, Demanded By Respondents, Violative Of Federal Rules of Civil Procedure And Petitioner's First Amendment Rights?

(b) Is The Injunction Repugnant To The Due Process Clause Of The Fifth Amendment To The United States Constitution Where District Court Fabricated Findings of Fact As Basis Of Said Injunction?

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Petitioner Friedrich Lu seeks a single petition for a writ of certiorari to cover both judgments (*Friedrich Lu v. David F. Hadlock, et al.* and *Friedrich Lu v. Choate, Hall & Stewart, et al.*) under S.Ct. Rule 12.4, because an identical question (question No. 1) is involved. In addition, Court of Appeals assigned the same panel to hear these two appeals, both of which were docketed *and* decided within one month of each other in the same way (summry disposition). In the level of district court, defendants in the second action presented judgment of the first action (*Lu v. Hadlock*) to press their point that federal court was without subject matter jurisdiction over that action, either. The identity of both actions will be kept separately, even though argument for question No. 1 is the same.

1. The Jurisdiction of this Court is invoked under 28 USC § 1254(1). On April 4, 1997, Court of Appeals summarily affirmed the injunction entered by the district court on December 5, 1996. On April 16, 1997, Court of Appeals denied rehearing.

2. Constitutional provisions, statutes, and regulations involved: Disciplinary Rule (DR) 5-101, 5-102, 5-103, 5-105, 5-105(D), and 7-104 of Supreme Judicial Court of Massachusetts Supreme Judicial Court; Amendments I and V; Fed.R.Civ.P. (Rule) 52(a), 65(d), 65(a)(1); 1st Cir. Local Rule 27.1.

Statement of the Case

This is an interlocutory appeal from an injunction. The Court of Appeals has sanctioned such a departure from accepted and usual course of judicial proceedings by a lower court, as to call for an excise of this Court's supervisory power. S.Ct. Rule 10(a).

The motion practice in a *state* district court of Massachusetts requires a moving party to serve and file the motion, mark it for hearing --all 7 days beforehand -- *and* be there to argue. No one is turned away and the court can *not* rule on paper alone. Respondents -- defendants and their lawyers in a lawsuit at one such state court -- plotted with an assistant clerk there. For 8 months, for no reason at all, Friedrich Lu's (Lu's) motions were not put on the motion list, despite Lu's protests. One such motion was to hold certain defendants in contempt of a court order transferred from another court. In May, 1996, they acted not only to deny said motion but also to dissolve the court order, on the sole ground that Lu did not appear to oppose, whereas in fact they had decided to keep Lu in the dark about their motions. One months later, Lu commenced the federal action, alleging violation of 42 USC § 1983 and the Sherman Act, with respondents listed as defendants. None denied the allegations. But the assistant clerk claimed absolute immunity and the remaining, including respondents, asserted that they could not be state actors, because they were not state employees -- although they have never cited any authority. Ergo, they moved to dismiss, charging Lu was frivolous. Meanwhile, respondents represented each other[1] but could

1. Self-represented law firm (Choate, Hall & Stewart) represents its employee (Attorney Bunis) and its former employee (Attorney Genova, who participated in the early phase of the state case). In turn, defendant Bunis represent co-defendants Hong and Ngo (who were Bunis's clients in the state court; that case has since lain dormant). To maintain this fiction, *Attorney* Bunis always filed a one-page paper

not provide a rule or decision to support their move. For conflict of interests,[2] Lu moved to disqualify and for Rule 11 sanction. Respondent opposed.[3]

District court issued a notice which set a "hearing on all pending motions," without a hint of injunction in store. The hearing, held on December 5, 1996, focusing in large measure on motions to dismiss. To avert any likelihood of summary judgment, Lu declined district court's repeated invitations to supply additional facts than already in the complaint. District court then said the complaint would be dismissed in no time.[4] (This promise was not realized.) Toward the end of the hearing, district court, without leaving the seat, reached a stack of identical papers on his bench (which had already been typed beforehand) and distributed to the parties, asked Lu for an opinion for the Order, signed one copy and gave to Lu.

On January 6, 1997, Lu submitted a notice of appeal for the interlocutory Order[5] but district court would not docket it. Lu requested to docket the appeal directly to the First Circuit, which

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which always adopted the entire submission his lawyer filed simultaneously. However, there is a catch: *Defendant* Bunis directed Lu not to talk to him (Bunis); for matters concerning his "clients" or otherwise, Lu was asked to consult with Bunis's lawyer, who is employed by, and represent the law firm. See Bunis's letter dated August 27, 1996. App. at A18.

2. In violation of Disciplinary Rule (DR) 5-101, 5-102, 5-103, 5-105, 5-105(D), and 7-104 of Supreme Judicial Court of Massachusetts, which was followed in the District of Massachusetts pursuant to Local Rule 83.6 (4)(B).

3. There was no affidavit. At the end of opposition, respondents stated:

> REQUEST FOR HEARING The Opposing Defendants request that the Court schedule a hearing to address their motion to dismiss, Plaintiff's motion to disqualify, and Plaintiff's two motions for Rule 11 sanctions. In the meantime, the Opposing Defendants ask the Court to order Plaintiff not to file any more motions until these threshold motions have been resolved.

Citing *James Lutherbach Construction Co., Inc. v. Adamkus* (CA7 1986) 781 F.2d 599, 603, n. 1, 11A Wright, Miller & Kane, *Federal Practice and Procedure*: Civil 2d § 2949, at 212 (1995), stated, "The appropriate procedure for requiring a preliminary injunction is by motion" which is explicitly so entitled. Lu was surprised by the sudden imposition of the injunction. Where the First Amendment freedoms are implicated, however, procedural safeguard to procure an injunction are strictly followed. *Carroll v. Princess Anne* (1968) 393 U.S.175, 180-185

4. District court said the complaint would be dismissed against all appearing defendants except assistant clerk for insubstantiality of federal question. As for the assistant clerk, the complaint would be dismissed under "state law immunity," district court said. When Lu asked what it was, lawyer for assistant clerk and district court soon abandoned "state law immunity. Lu had shown that under common law there was no absolute immunity for a court clerk performing ministerial function.

declined but let the district court know Lu's plight. The latter on January 15 entered an order for leave to file the notice of appeal. Subsequent to the Order, defendants continued to file motions, including a motion to sanction Lu for *serving* them papers whereas the Order only barred Lu from *filing*. Lu could not respond to any of them. Sensing Lu being legally defenseless due to the restraint of the Order (which blocks access to both state and federal court), friends of one defendant repeatedly broke into Lu's apartment. Lu's emergency motion to Court of Appeals was not ruled.

To shoulder their burden,[6] respondents ordered transcripts, filed one, and notified Court of Appeals that the remnant would be forthcoming. They filed on April 3, 1997, which the court allowed. The next day, Court of Appeals summarily affirmed the Order, stating it did not have the benefit of the second transcript.[7] Lu reminded it did but Court of Appeals denied his petition for rehearing.

Argument

Respondents (as defendants in state and federal cases) are engaged in "a pattern of baseless, repetitive claims"[8] completely devoid of *any* basis in fact or law It is incomprehensible how they can come so far along.

I

A lawyer can be a party litigant *and* testify in his own case.[9] When a law firm is a party, it can represent itself, despite the fact that members of that firm would have to testify.[10] A lawyer/litigant can hire his own law firm to represent him, provided that the latter is not a co-party.[11] Lu does not challenge these positions.

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5. The Order is an injunction, thus immediately appealable. 28 USC § 1292(a)(1); *International Longshoremen's Ass'n, Local 1291 v. Philadelphia Marine Trade Ass'n* (1967) 389 U.S. 64, 75-76; *Moses H. Cones Memorial Hospital v. Mercury Construction Corp.* (1983) 460 U.S. 1, 8-13.

6. *New York Times Co. v. United States* (1971) 403 U.S. 713, 714. Lu had provided his account of the hearing, see *Draper v. Washington* (1963) 372 U.S. 487, 495 (alternative methods of reporting trial proceedings); respondent did not challenge it.

7. Lu's theory is that Court of Appeals was doubtful of Lu's claim. After reading the transcript, it threw the hot potato away.

8. *California Motor Transport Co. v. Trucking Unlimited* (1972) 404 U.S. 508, 513.

9. *Gorovitz v. Planning Board of Nantucket* (1985) 394 Mass. 246,475 N.E.2d 377.

10. *Theobald v. Botein, Hayes, Sklar & Herzberg* (S.D.N.Y.1979) 465 F.Supp. 609.

11. *Borman v. Borman* (1979) 378 Mass. 775, 393 N.E.2d 847, 856; *In re American Cable Publications, Inc.* (CA10 1985) 768 F.2d 1194 (same; collecting cases).

On the other hand, if a lawyer/litigant is a material *witness* and his status as a named party is a mere formality, his law partner will be disqualified from representing the lawyer/litigant *and* a co-party, because DR 5-102 (A) kicks in. *Estate of Andrews by Andrews v. United States* (E.D.Va.1992) 804F.Supp.820, 827. Both *Estate of Andrews* and *International Electronics Corp. v. Flanzer* (CA2 1975) 527 F.2d 1288 involved a nominal party, accounting for decisions which at first glance seem odd.

Lu's painstaking research found three decisions essentially prohibiting a party from representing a co-party: *Chang v. Chang* (1993) 190 A.D.2d 311, 597 N.Y.S. 692; *Guiliano v. Carlisle* (1995) 211 A.D.2d 757, 621 N.Y.S.2d 685; *Valley Ranch Development Co. Ltd. v. F.D.I.C.* (CA5 1992) 960 F.2d 550, 556 ("Texas Law does not permit a current [plaintiff's] attorney to take role of co-plaintiff.").

When an attorney is implicated in the same or related activity his client is accused of, he would be disqualified.[12] "[A]ctual conflict of

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12. *United States v. Cunningham* (CA2 1982) 672 F.2d 1064, 1074-1075; *Mannhalt v. Reed*(CA9 1988) 847 F.2d 576, cert. denied (1988) 488 U.S. 908;*United States v. Salinas* (CA5 1980) 618 F.2d 1092, cert. denied (1980) 449 U.S. 961 (attorney disqualified who trial judge believed was "target" of investigation concerning even(s) for which his clients were indicted); *United States v. Marren* (CA7 1990) 919 F.2d 61 (attorney disqualified for participating in conspiracy); *United States v. Hobson* (CA11 1982) 672 F.2d 825 (same; citing Canon 9); *United States v. Fulton* (CA2 1993) 5 F.3d 605 (same); *In re Investigation before February, 1977, Lynchburg Grand Jury* (CA4 1977) 563 F.2d 652 upheld (W.D.Va.1977) 432 F.Supp. 50; *Government of Virgin Islands v. Zepp* (CA3 1984) 748 F.2d 125, 132 (conviction reversed where defense counsel had actual conflict of interest -- facing potential criminal liability for the same charges on which defendant was tried and acting as prosecuting witness through stipulation); *United States v. Clarkson* (CA4 1977) 567 F.2d 270 (already under indictment for filing fraudulent tax claims on behalf of certain taxpayers, attorney found in contempt for violating order disqualifying him from representing these taxpayers, who were now "potential witnesses" against him); *United States v. Greig* (CA5 1992) 967 F.2d 1018 (actual conflict when attorney implicated in obstructing justice to aid defendant); *United States v. White* (CA5 1983) 706 F.2d 506 (actual conflict when attorneys being investigated concerning prior escape of defendant); *United States v. Levy* (CA2 1994) 25 F.3d 146, 156 (same); *United States v. Ellison* (CA7 1986) 798 F.2d 1102, 1106-1108 (actual conflict when pursuit of defendant's allegations would lead to attorney's malpractice);*United States v. Cancilla* (CA2 1984) 725 F.2d 867 (conviction reversed on unusual facts that defendant's trial counsel had himself engaged in criminal activity related to the conduct for which defendant was convicted and that defendant had no knowledge of any such activity by his counsel); *United States v. McLain* (CA11 1987) 823 F.2d 1457, 1463-1464 (same).

interest adversely affecting lawyer's performance renders assistance ineffective."[13] Respondents deliberately set up the conclict-of interest problem as a sure-fire way to reversal if they lose.[14]

Using interlocking representation, defendant lawyers has consistently insisted that *everything* going on between them (not only their conversations) is cloaked by attorney-client privilege,and thus not discoverable.[15]

II

Issuance of the Order contravened Rule 52(a) & 65(d) on findings of fact; 65(a)(1) on notice; 65(b)(1) on affidavit.

This case is fundamentally no different from *Organization for A Better Austin v. Keefe* (1971) 402 U.S. 415. In both cases, business rivals, offended by "public criticism of business practices," *id.*, at 419, sought an injunction "to silence the voice of competing speakers."[16] Having achieved their goal barring Lu from speaking out against representation by co-defendants, respondents now wants to suspend the action for as long as possible, if not forever. The fact that a state judge rather than an administrative censor entered the restraint made

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13. *Strickland v. Washington* (1984) 466 U.S. 668, 686, citing *Cuyler v. Sullivan*, 446 U.S. at 345-350. Recast *Sullivan* in different wording, *Washington* stated at 692, "prejudice is presumed when counsel is burdened by an actual conflict of interest."

14. See *Wood v. Georgia* (1981) 450 U.S. 261, 267 (agenda on part of theater owner). "Moreover, *Sullivan mandates* a reversal when the trial court has failed to make an inquiry even though it knows or reasonably should know that a particular conflict exists." *Id.*, at 272, n. 18 (emphasis original; internal quotation mark omitted).

15. On technical front, district court's omission permitted "an intolerable situation" to be created. Two defendants (Hong & Ngo) was represented by a third defendant Michael H. Bunis, who was in turn represented by his lawyers, with the latter also representing their own law firm, a co-defendant. If Lu were to comply with D. Mass. Local Rules concerning a motion on Bunis's "clients", Lu was supposed to discuss with their counsel (Bunis). But DR 7-104(A)(1) of Mass. Supreme Judicial Court forbids Lu to communicate with Bunis, in that he (Bunis) was represented. Does this mean Lu ought to consult with Bunis's lawyers in matters concerning Bunis's clients, even though Bunis's lawyers did not represent Bunis's clients? Another difficulty Lu faced was, if pursuant to Fed.R.Civ.P. 5, Lu served papers on Bunis's lawyer (but not on Bunis himself), were Bunis's clients considered served?

16. *Turner Broadcasting System, Inc. v. FCC* (1994) 512 U.S. 622, 656. See *Gulf Oil Co. v. Bernard* (1981) 452 U.S. 89. See also *Bailey v. Systems Innovation, Inc.* (CA3 1988) 852 F.2d 93 (set aside prior restraint on pure speech in civil action).

no difference.[17] The Order, at 2, does not place any time limit on when it (the Order) will be "vacat[ed] or modif[ied]," stating only that "not later than the date on which this court has completed its consideration of and ruling upon all pending motions."[18]

City of Ladue v. Gilleo (1994) 512 U.S. 43, 49-50, referred to two different lines of reasoning in *Metromedia, Inc. v. City of San Diego* (1981) 453 U.S. 490, both of which applies to the Order here, because all defendants may file papers below whereas Lu, a plaintiff, may not. "[A] law or policy permitting communication in a certain manner for some but not for others raises the specter of content and viewpoint censorship."[19] In the process, adversary proceedings, quintessential to American judicial system, cease to function in this case.[20] "The government may not regulate use based on hostility--or favoritism--towards the underlying message expressed."[21]

Moreover, the Order "almost completely foreclosed a venerable means of communication [with the court] that is both unique and important. * * * Our prior decisions have voiced particular concern with laws that foreclose an entire medium of expression." *Ladue*, at 54-55.[22]

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17. *Vance v. Universal Amusement Co., Inc.* (1980) 445 U.S. 308, 317. See *Alexander v. United States* (1993) 509 U.S. 544, 550 ("Temporary restraining orders and permanent injunctions -- *i.e.*, court orders actually forbid speech activities -- are classic examples of prior restraints") & 553, n. 2.

18. A scheme that licensor has unlimited time within which to issue a license "creates the risk of indefinitely suppressing permissible speech." In other words, "undue delay results in the unconstitutional suppression of protected speech." *FW/PBS, Inc. v. Dallas*, at 227,228 (plurality opinion). Accord, *Vance, supra*, at 316 (a prior restraint of indefinite duration)

19. *City of Lakewood v. Plain Dealer Publishing Co.* (1988) 486 U.S. 750, 763.

20. For example, after issuance of the Order, district court allowed a defendants' motion (to retract a previous answer and file a motion to dismiss instead) on the same day it was submitted without awaiting Lu's response -- because Lu simply could not.

21. *R.A.V. v. City of Saint Paul* (1992) 505 U.S. 377, 386. See also *Ladue*, 512 U.S., at 51, n. 9.

22. Neither district court nor Court of Appeals decided the nature of forum involved. If Lu has to choose one, he believes a lawsuit is a nonpublic forum, see *International Society for Krishna Consciousness, Inv. v. Lee* (1992) 505 U.S. 672, 678-683, and that a lawsuit, rather than the physical facility of the court, is the relevant forum. See *Cornelius v. NAACP Legal Defense & Educational Fund, Inc.* (1985) 473 U.S. 788, 799-806. Submissions in a lawsuit does not have "as a principal purpose . . . the free exchange of ideas." *Lee, supra*, at 679: A nonparty rarely participates, except perhaps as an intervenor or amicus curiae, and only with approval of the court; a court has various rules "to secure the just, speedy, and inexpensive determination of every action." Fed.R.Civ.P. 1. Cf. *Lee*, at 682 (airport terminals for the purpose of

III

Issuance of the Order did not comply with due process clause of the Fifth Amendment.

The Order was prepared *in advance of* the hearing, which had already concluded that *during* the hearing, Lu's statement would be false. District court then predicated on this "finding" to issue the Order. The whole thing is upside down. (The Order could not have based, even in part, on the remote possibility that district court mistakenly thought Lu's complaint and other court papers were frivolous. Otherwise, district court could have easily put that finding on the Order in aa more than conclusory manner.) Except in corrupt cases[23] and *Alice's Adventures in Wonderland* (Queen: sentence first and verdict later), diligent search fails to find a similar case.

Petitioner: Friedrich Lu, pro se
Signed:
Date: April 24, 1997
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efficient air travel); And Rule 11 is hovering over a litigant's head. Compare *Cohen v. California* (1971) 403 U.S. 15 (conviction overturned for wearing a jacket bearing the words "Fuck the Draft" in the courthouse corridor but not in courtroom). In a sense, a lawsuit is akin to the nonpublic fora adjudged in *Cornelius* (fundraising literature aimed at federal employees) and *Perry Education Assn v. Perry Local Educators' Assn* (1983) 460 U.S. 37 (internal mail system of school district).

Lu asserts his endeavor in prosecuting and defending lawsuits as in "trade or commerce." 15 USC § 1. Viewing his court filings in that perspective, "only false, deceptive, or misleading commercial speech may be banned." *Ibanez v. Florida Dept. of Business and Professional Regulation, Bd. of Accounting* (1994) 512 U.S. 136, 142. This view might not be heretic because, after all, *Cornelius* dealt with solicitation in a nonpublic forum.

23. See *e.g., Bracey v. Gramley* (CA7 1996) 81 F.3d 684, cert. granted (1997) _ U.S._, 136 L.Ed.2d 643.

Constitutional Provisions, Statutes, and Regulations Involved

(1) Local Rule 83.6 (4)(B) of U.S. District Court for the District of Massachusetts:
"The ethical requirements and rules concerning the practice of law mean those canons and rules adopted by the Supreme Judicial Court of Massachusetts, embodied in Rule 3:05, 3:07 and 3:08 of said court * * *"

(2) The relevant rules under Rule 3.07 are as follows. Only the heading of disciplinary rules is listed here for a bird-eye view. The full test, copied from Massachusetts Rule of Court (State) West Publishing, 1997, p. 286 et seq., is attached hereby.

DR 5-101 (refusing employment when the interests of the lawyer may impair his independent professional judgment)

DR 5-102 (withdrawal as counsel when the lawyer becomes a witness): Here, the defense counsel are more than witnesses; they are co-defendants.

DR 5-103 (avoiding acquisition of interest in litigation)

DR 5-105 (refusing to accept or continue employment if the interests of *another* client may impair the independent professional judgment of the lawyer): In the instant action, defense counsel's own interests are opposite to those co-defendants they purportedly represented. Like "prisoners' dilemma," co-defendants may turn on each other to avoid heavy penalty.

DR 5-105(D): "If a lawyer is required to decline employment or to withdraw from employment under a Disciplinary Rule, no partner or associate or any other lawyer associated with him or his firm may accept or continue such employment."

DR 7-104 (communication with one of adverse interest): The purported counsel simply can not confer with plaintiff to narrow discovery disputes, as required by Local Rule 37.1(A).

(3) (A) Fed.R.Civ.P. 52(a): "In granting or refusing interlocutory injunctions, the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action." Rule 65(d) ("Every order granting an injunction * * * shall set forth the reasons for its issuance; shall be specific in terms")

(B) Rule 65(a)(1): "No preliminary injunction shall be issued without notice to the adverse party."

(4) Amendment I
"Congress shall make no laws * * * abridging the freedom of speech, or the press; * * * and to petition the Government for a redress of grievances."

(5) Amendment V
"nor [shall any person] be deprived of life, liberty, or property, without due process of law"

(6) First Circuit Local Rule 27.1 (Summary Disposition)
"At any time, on such notice as the court may order, on motion of appellee or sua sponte, the court may dismiss the appeal or other request for relief or affirm and enforce the judgment or order below if the court lacks jurisdiction, or if it shall clearly appear that no substantial question is presented. In case of obvious error the court may, similarly, reverse. Motions for such relief should be promptly filed when the occasion appears, and must be accompanied by four copies of a memorandum or brief."

Appendix

Order, December 5, 1996, U.S. District Court (D.Mass.) A1
Order, January 15, 1997, U.S. District Court (D.Mass.) A3
Order, April 3, 1997, the First Circuit A4
Order, April 4, 1997, the First Circuit A5
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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRIEDRICH LU,	)	
Plaintiff	)	
v.	)	CIVIL ACTION
PAUL RAVIDA, et al.,	)	NO. 96-11253-REK
Defendants	)	
	)	

ORDER
December 5, 1996

The court has found that plaintiff in this case has included in his original complaint claims that, even if the factual conclusions alleged in the complaint are assumed to be supportable are nevertheless unsupported by any legal theory under which this court would have authority under the Constitution and laws of the United States to grant relief. The court has further found that plaintiff has repeatedly filed additional pleading in this action that are legally insupportable and, after hearing this date, has also found to be based on factual allegations that are false. in these circumstances, and because of the likelihood that further abuses of the processes of this court for the administration of justice will occur unless the court takes prompt action to protect persons and entities against whom plaintiff has made insupportable claims. and is likely to make further insupportable claims unless this court intervenes, it is ORDERED: 2>

Effectively immediately, and continuing until an order is made by this court vacating or modifying the present Order, plaintiff is ordered not to file any further submission in this case, and not to file in this or any other court any other case based on any of the same allegations or circumstances as plaintiff has alleged in this civil action. A further order regarding plaintiff's making any additional filings will be made by this court not later than the date on which this court has completed its consideration of and ruling upon all pending motions.

If, before this court has terminated or vacated this Order, in violation of this Order, plaintiff tenders to the Clerk for filing any further submission, the Clerk is directed not to receive and file the

submission. If plaintiff so requests, the Clerk may stamp the submission "received" and the date on which it is received and, without having filed it, deliver it to the undersigned judge for directions as to disposition.

Robert E. Keeton /s/
United States District Judge

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRIEDRICH LU,	)	
Plaintiff	)	
v.	)	CIVIL ACTION
PAUL RAVIDA, et al.,	)	NO. 96-11253-REK
Defendants	)	
	)	

ORDER
January 5, 1997

This court's interlocutory Order of December 5, 1996 placed in effect an order, effectively immediately (and continuing until an order is made by this court vacating or modifying that Order), ordering the plaintiff

> not to file any further submission in this case, and not to file in this or any other court any other case based on any of the same allegations or circumstances as plaintiff has alleged in this civil action. A further order regarding plaintiff's making any additional filings will be made by this court not later than the date on which this court has completed its consideration of and ruling upon all pending motions.

Plaintiff, as permitted by a later provision of the Order of December 5, 1996, tendered to the clerk of this court,, on January 6, 1997,, a document entitled "Plaintiff's Notice of Appeal," with the request that the clerk present it to the undersigned judge for permission to file it. 2>

The requested permission is granted. The clerk will file the document and forthwith deliver it, a copy of this Order, and a copy of this court's Order of December 5, 1196 to the clerk of the Court of Appeals.

This is not an order regarding appealability, since that is not a matter for decision by this court absent directions from the Court of Appeals.

Robert E. Keeton /s/
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-1125

FRIEDRICH LU
Plaintiff-Appellant
v.
RAVIDA, ET AL.,
Defendants-Appellees

ORDER OF COURT
Entered: April 3, 1997

Upon consideration of motion,
Leave is granted to file a supplemental appendix to appellees' partial appendix.

By the Court:
William H. Ng, Clerk
By Janice M. O'Neil
Chief Deputy Clerk

cc: Friedrich Lu
Michael H. Bunis, Esq.
Robert M. Buchanan, Esq.
Pamela J. Coveney, Esq.
John R. Bologna, Esq.
David Sean McMahon, Esq.
Matthew P. Poppel, Esq.
Kathleen M. Genova, Esq.
Douglas S. Brown, Esq.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-1125

FRIEDRICH LU
Plaintiff-Appellant
v.
RAVIDA, ET AL.,
Defendants-Appellees

Before

Selya, Circuit Judge,
Cyr, Senior Circuit Judge,
and Boudin, Circuit Judge.

ORDER OF COURT
Entered April 4, 1997

We have jurisdiction under 28 U.S.C. § 1292(a)(1) to hear this interlocutory appeal from the December 5 order, which restrains appellant Lu from pursuing litigation in the district court and other fora. Accordingly, the order to show cause is discharged.

The directive by the district court is a perfectly routine housekeeping measure insofar s it directs appellant not to file further submissions in the case pending in the district court until the court has completed consideration of the pending motions. The further directive to restrict the filings of related actions in other courts is a far more unusual measure even though it too is temporary; but appellant has deprived us of any means to determine whether the latter directive is ill-founded, because he has expressly declined to furnish a transcript of the hearing from which the order eventuated. (One of the appellees provided a partial transcript, but it does not include any argument or testimony relevant to our determination.) Accordingly,, we think that summary disposition is appropriate under 1st Cir. Loc. R. 27.1, noting that the district court has

expressed its intention to revisit the matter when the still-pending motions before it have been resolved. 2>

Therefore, the December 5 order is affirmed. Appellant's motions to docket and expedite the appeal, to stay the December 5 order, and to allow filing of four copies of his brief are denied as moot. Appellant's "Emergency Motion for Leave to file a Motion for Injunction at Federal District Court" is denied.

By the Court:
William H. Ng /s/
Clerk

[Cert. copy to Clerk, U.S. Court of Massachusetts]
[cc; Messrs. Lu, Bunis, Buchanaaan, Coveney, Bologna, McMahon, Poppel, Genova and Brown]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 97-1125

FRIEDRICH LU
Plaintiff-Appellant
v.
RAVIDA, ET AL.,
Defendants-Appellees

Before

Selya, Circuit Judge,
Cyr, Senior Circuit Judge,
and Boudin, Circuit Judge.

ORDER OF COURT
Entered April 16, 1997

Upon review of appellant's petition for rehearing and also appellees' late filed supplemental appendix, we find no reason to depart from our original decision to affirm the December 5 order. Therefore, the petition is denied.

By the Court:
William H. Ng /s/
Clerk

[cc; Messrs. Lu, Bunis, Buchanaaan, Coveney, Bologna, McMahon, Poppel, Genova and Brown]

CANON 5 A Lawyer Should Exercise Independent Professional Judgment on behalf a Client

DISCIPLINARY RULES

DR 5-101. Refusing Employment When the Interests of the Lawyer May be Impair His Independent Professional Judgment

(A) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

(B) A lawyer shall not accept employment in contemplated or pending litigation if he knows or it is obvious that he or a lawyer in his firm ought to be called as a witness, except that he may undertake the employment and he or a lawyer in his firm may testify:

(1) If the testimony will relate solely to an uncontested matter.

(2) If the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony.

(3) If the testimony will relate solely to the nature and value of legal services rendered in the case by the lawyer or his firm to the client.

(4) As to any matter, if refusal would work a substantial hardship on the client because of the distinctive value of the lawyer or his firm as counsel in the particular case.

DR 5-102.Withdrawal as Counsel When the Lawyer Becomes a Witness

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5-101(B), (1) through (4).

(B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client.

DR 5-103 Avoiding Acquisition of Interest in Litigation

(A) A Lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation he is conducting for a client, except that he may:

(1) Acquire a lien granted by law to secure his fee or expenses.

(2) Contract with a client for a reasonable contingent fee in a civil case.

(B) While representing a client in connection with contemplated or pending litigation, lawyer shall not advance or guarantee financial assistance to his client, except that a lawyer may advance or guarantee the expense of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

DR 5-105. Refusing to Accept or Continue Employment if the Interests of Another Client May Impair the Independent Professional Judgment of the Lawyer

(A) A lawyer shall decline proffered employment is the exercise of his independent professional judgment on behalf of a client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105(C).

(B) A lawyer shall not continue multiple employment if the exercise of his independent professional judgment in behalf of a client will or is likely to be adversely affected by his representation of another client, or if it would be likely to involve him in representing differing interests, except to the extent permitted under DR 5-105(C).

(C) In the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

(D) If a lawyer is required to decline employment or to withdraw from employment under a Disciplinary Rule, no partner or associate or any other lawyer associated with him or his firm may accept or continue such employment. A lawyer employed by the Public Counsel Division of the Committee for Public Counsel Services and a lawyer assigned to represent clients by the Private Counsel Division of

that Committee are not considered associated. Lawyers are not considered to be associated merely because they have each individually been assigned to represent clients by the Committee for Public Counsel Services through its Private Counsel Division.,

DR 7-104 Communicating with One of Adverse Interest

(A) During the course of his representation of a client, a lawyer shall not:

(1) communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or is authorized by law to do so.

(2) Give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the interests of such person are not or have a reasonable possibility of being in conflict with the interests of his client.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 96-11253-REK

Friedrich Lu, Plaintiff

v.

Paul Ravida, Donna McDonough, Michael Van Dang, Hong T. Nguyen, Thuc V. Nguyen, Chi Thuykim Nguyen, Nam South Nguyen, Tam Thi Ngo, Kathleen M. Genova, Michael H. Bunis, Choate, Halls & Stewart, Kenneth W. Luke, Blue Cross and Blue Shield of Massachusetts, John Hancock Property & Casualty Insurance, John P. Joy, IRI Software, Peter E. Gelhaar, Donnelly, Conroy & Gelhaar, John Guglielmi, John J. Clough, Defendants

COMPLAINT

Parties

1) All parties are residents of, or partnerships or corporations based in Massachusetts.
2) Defendant John J. Clough, Assistant Clerk of Dorchester Court, is sued in his personal capacity.
3) Choate, Halls & Stewart, Blue Cross and Blue Shield of Massachusetts, John Hancock Property and Casualty Insurance, and IRI Software are engaged in interstate commerce.

Jurisdiction

This court has jurisdiction over this matter pursuant to 28 USC § 1331.

Statement of Facts

4) Friedrich Lu (Lu) on August 31, 1994, sublet a room from Hong T. Nguyen and Thuc V. Nguyen in a two-bedroom apartment located at 123 Sydney Street #3, Dorchester, MA.
5) The Nguyen family in turn rented the apartment from landlord Paul Ravida (Ravida).
6) Around early 1995, Lu was an informant for Massachusetts, reporting welfare fraud committed by the Nguyens (including Chi Thuykim Nguyen and her mother Tam Thi Ngo), amounting to more than twenty thousand dollars. Lu also reported to various Massachusetts agencies for Tam Thi Ngo's running an unlicensed day care center (while hiding the income to receive welfare) and the

unbearable living condition in the apartment. The Nguyens found out. Part of welfare fund is derived from without Massachusetts.
7) On or about May 6, 1995, Chi Thuykim Nguyen's husband named Nam South Nguyen ran after Lu while the latter was leaving the apartment, shouting, among other things, "Just be careful."
8) On or about May 24, 1995, Ngo threw a knife at Lu, who was 4 feet away.
9) On or about May 28, 1995, Thuc V. Nguyen (Tam Thi Ngo's son) battered Lu. Michael Van Dang (Hong T. Nguyen's boyfriend) and the Nguyens then prevented Lu from seeking help by obstructing the exit physically and by unplugging the telephone. After Lu came back from the police station, Ravida said, "I'll have you deported," and "I 2> know people in the court; I know judges. I'll have you locked up because judges are good friend of mine." Ravida then shouted 20 minutes in Lu's face just inches away, for Lu's alleged disrespect to him when he made the above comments. Ravida's sister, Donna McDonough, jumped in, falsely accusing Lu of going into the apartment's basement.
10) On or about June 1, 1995, Ravida, Donna McDonough, Michael Van Dang and the Nguyens changed the apartment lock to lock Lu out.
11) On June 2 and 5, 1995, respectively, Lu got two court orders to enter said apartment, but defendants refused to obey.
12) On or about June 5, 1995, Michael Van Dang requested a baseless criminal complaint (i.e., intimation) against Lu to gain advantage in the upcoming re-hearing for the court orders. Michael Van Dang's complaint was dropped by Dorchester District Court later.
13) In the first week of June, 1995, Ravida, Donna McDonough and Michael Van Dang six times called Boston Police to arrest Lu, culminating in causing Lu to be arrested in the early morning of June 7, 1995, when Lu requested to be admitted to said apartment pursuant to the court orders.
14) On or about July 21, 1995, Ravida and Donna McDonough once again called Boston Police to arrest Lu for "trespass" to said apartment, even though Lu had repeatedly told Ravida that trespass does not apply in this situation. This time, they failed. Lu and Ravida then went to Dorchester District Court to seek an assistant clerk for informal resolution of dispute. That particular assistant clerk was not working that day. When Lu and Ravida continued bickering at the Clerk's Office there, a man (then unknown to Lu, but in November, 1995, Lu learned it was John J. Clough) came up, listened to Ravida, without ever identifying himself. Without asking to hear Lu's side of story, the man, sounding innocuously, directed Lu to "the room across

the hall to fill in a form, and then wait in the courtroom." That afternoon, when told the proceeding was was for arraignment for charge of criminal trespass, Lu protested right away over criminal court's jurisdiction. Not until the arraignment was over and when Lu was leaving, was Lu provided with the written complaint, which invoked G.L. c. 266, § 120. Because the statute explicitly excludes tenants, Lu immediately moved for dismissal. The prosecutor resisted dismissal at behest of Ravida. Eventually Dorchester District Court dropped the charge.

15) Lu initiated a civil complaint at Dorchester District Court against Hong T. Nguyen and Thuc V. Nguyen in late May, 1995 (Civil Action No. 95-590). Lu moved for default judgment. Three times, Lu marked for hearing and went to court. Three times (on November 7, 14 &21, 1995) Assistant Clerk refused to let Lu be heard. In the third occasion, Lu would not yield, demanding his motion to be heard. Mr. Clough complied. To Lu's astonishment and anger, Mr. Clough opposed the motion vehemently, even after 3> the presiding judge had allowed the motion. The judge then crossed out allowance and denied the motion.

16) Lu had a second complaint pending at Middlesex Superior Court. On or about November 29, 1995, Lu informed defendant/attorney John A. Guglielmi (a lawyer mulling representation of Michael Van Dang) of recent filing of an amended complaint. Without ever aware of its contents, Mr. Guglielmi said, "Can I file a motion to dismiss now!"

17) On December 5, 1995, defendant/Attorney Kathleen M. Genova of Choate, Hall & Stewart entered appearance for Hong T. Nguyen in both state actions. On or about December 20, 1995, Ms. Genova lied to Kenneth Lum (a person at Lu's business address in Somerville). Stating that she was Lu's attorney (while in fact representing Lu's adversary), Ms. Genova asked Kenneth Lum to sign an affidavit so as to show that Lu did not live there. Among numerous frivolous motions Ms. Genova filed at superior court in the 2-week period (altogether 2 inches thick), one was a motion to dismiss, in which Ms. Genova accused Lu of fraud on the court "in falsely representing that he resides in Middlesex County, which he repeatedly and constantly did in blatant violation of Mass.R.Civ.P. 11(a), and for bringing this action in a court he knew or should have known was not the proper venue." (In early January, 1996, Attorney Genova told Lu, "My job is to make sure you lose.") When Challenged, Ms. Genova could point out a single incidence of Lu's fraud. Defendant/Attorney Michael H. Bunis (who replaced Ms. Genova) and Mr. Guglielmi went before a superior court judge to argue for dismissal. Over there, on or about

February 13, 1996, Attorney Guglielmi conceded that he intended to, but did not, file a motion to dismiss for his clients (Ravida, Donna McDonough and Michael Van Dang). The motion filed by Ms. Genova and argued by Mr. Bunis was denied. The superior court action was, however, remanded to Dorchester District Court to consolidate with the action already there.

18) A few months later, before a Dorchester Court judge, Attorney Guglielmi would say he had submitted a motion to dismiss to superior court (and allowed in his clients' favor, he alleged) when Lu moved for default. Attorney Bunis would say that actually his motion to dismiss was not argued nor decided (let alone denied), and moved again for dismissal, clearly in violation of court rules. Another example of sham was Attorneys Bunis and guglielmi would file answers to the complaint, without getting prior judicial approval, over Lu's objection and ignoring a state court judge's order to do so.

19) In January, 1996, alarmed by the avalanche of the frivolous motions served by Attorneys Genova and Guglielmi (and afterwards, by Attorney Bunis), Lu raised the specter of Rule 11 and G.L. c. 231, § 6F, sanctions, to no avail. On or about February 27, 1996, when discussing his motion to dismiss then pending at Middlesex Superior 4> Court, Attorney Bunis said to Lu , "How do you know the judge will not make a mistake [and erroneously allowed my -- Mr. Bunis' -- motion]?"

20) Around August, and on October 10, 1995, mandated by Rule 9C of Massachusetts Superior Court, Lu went to Blue Cross and Blue Shield to resolve discovery disputes. Instead Blue Cross and Blue Shield repeatedly sent security guards to intimidate Lu.

21) Defendant Kenneth W. Luke of Blue Cross and Blue Shield, defendant John P. Joy of IRI Software, and John Hancock Casualty and Property Insurance, in a joint venture with other defendants, repeatedly opposed Lu without cause, which included misrepresentations and outright lies to the court. In June, 1995, before Lu's motion to compel John Hancock Insurance was to be heard in the Dorchester court, Lu called a supervisor at the insurance company to resolve discovery dispute. The supervisor shot back, "We have talked to the court. They said we don't need to comply." Lu's motion was subsequently denied.

22) At Dorchester District Court, Lu had marked a motion for hearing on April 9, 1996. When the hearing date arrived, Lu went but Assistant Clerk John J. Clough did not place it on the motion list. Mr. Clough was not there (another assistant clerk was in the motion session.). But Mr. Clough had made sure that the court file (No. 95-590) was stashed away, with his instruction that "Do not disturb. I

want to study it." That day, Lu filed 2 motions, marked for hearing one week later. On April 16, 1996, those 2 motions again are not on the motion list. Lu insisted in being heard but Mr. Clough would not allow. Instead he wanted it to be heard on April 22, 1996, especially for me. Dorchester District Court establishes every Tuesday morning (and that time only in the week) as a civil motion session. April 9 and 16, 1996, for instance, were Tuesday, but April 22, 1996 was a Monday. Lu refused the arrangement and persisted in his request to be heard that day, on April 16. Finally Mr. Clough had Lu's motions brought into the court room, but then objected to the motions being heard. Mr. Clough still wanted them to be heard on April 22.

23) On May 14, 1996, in the open court at Dorchester, expressing his serious doubt of Mr. Clough's neutrality, Lu said he would transfer the case to Boston Housing Court as of his right. Attorney Bunis and Mr. Clough suddenly got panicky, with Mr. Bunis urgently pressed for a second round of motion to dismiss.

24) Mr. Clough meanwhile conducted a flurry of activities in the next several days. Alleging a Dorchester Court judge issued an order to show cause, Mr. Clough called and wrote to Mr. John P. Joy of IRI Software (a witness who had ignored a subpoena and a court order), without ever attempting to notify Lu of the hearing. On May 28, 1996, of course Lu did not show up. Defendant/attorney Peter E. Gelhaar, representing IRI Software, conveniently submitted a motion to vacate the orders, when he knew or should 5> have known that on-the-spot submission of motions violates a court rule of 7-day notice in advance.

25) Since 1995, Mr. Clough has conducted numerous *ex parte* communications with Lu's various adversaries, conveying insider's information.

26) Mr. Clough has shown an extraordinary interest in that case, constantly researching the whole file (which by now is 4 to 5 inches thick and sits constantly on his desk). There are 5 other assistant clerks in Dorchester Court, but in every hearing Lu might attend, Mr. Clough always positions himself there to control motion list and intervene. On or about May 30, 1996, helpless and frustrated, Lu finally took the unusual step to request Mr. Clough to recuse himself in this case, fully aware that a recusal request is almost without exception directed to a judge. Mr. Clough ignores. (On or about December 7, 1995, Lu complained to Attorney Kathleen M. Genova about the *ex parte* communications. However, the situation only go worse.)

27) The scheme is ongoing and open ended.

28) All defendants combine to harass and deter Lu from his right to justice in court by massive, concerted, and purposeful group activities.
29) This conspiracy has injured Lu's trade and/or property interest. Lu also suffers loss of money.

30) Paragraphs 1 to 29 are repeated before each and every count below.
31) COUNT ONE: 42 USC § 1983 (federal civil action for deprivation of rights)
All defendants (except Choate, Halls & Stewart, Kenneth Luke, Blue Cross and Blue Shield of Massachusetts, John Hancock Property and Casualty Insurance, and IRI Software), under color of state laws and regulations, subject or cause to be subjected, Lu to the deprivation of rights or privileges secured by the due process and equal protection clause of Fourteenth Amendment to the United States Constitution.
32) COUNT TWO: common law tort
Defendant John J. Clough knew or should have known (A) that in issuing process against Lu as a tenant/occupant for trespass, without following due process, he was clearly acting without his jurisdiction, and (B) that he discharges his clearly established ministerial duties unlawfully (a) in refusing 5 times to put Lu's motions on the motion lists, (b) in objecting to Lu's motions when heard, and (c) in not notifying Lu of May 28, 1996, hearing.
33) COUNT THREE: G.L. c. 12, § 11*I* (Massachusetts Civil Rights Act)
Defendants (Paul Ravida, Donna McDonough, Michael Van Dang, Hong T.Nguyen, Thuc V. Nguyen, Chi Thuykim Nguyen, Nam South Nguyen, Tam Thi Ngo, Kenneth W. Luke, Blue Cross and Blue Shield of Massachusetts) interfered, or attemped to interfere, by threats, intimation or coercion, with the exercise or enjoyment by Lu of rights 6> secured by articles 1, 10, 11, 12 16, 19 of the Declaration of Rights to the Constitution of Massachusetts and G.L. c. 186 §§ 14, 15F & 18; along with G.L. c. 175*I*, § 13(8) and Massachusetts Superior Court Rule 9C, only for Kenneth W. Luke and Blue Cross and Blue Shield.
34) COUNT FOUR: Sherman Antitrust Act (15 USC § 1)
All defendants contract, combine in the form of trust or otherwise, or conspire, in restraint of trade or commerce among the several states or with foreign nations.
35) COUNT FIVE: G.L. c. 93A, § 11 (unfair trade practice)
Lu engages in the conduct of trade or commerce, and suffers loss of money or property, real or personal, as a result of the use or employment by all defendants who engage in trade or commerce of

an unfair method of competition or an unfair or deceptive act or practice declared unlawful.

36) COUNT SIX: malicious prosecution

Michael Van Dang on June 5, and Ravida on July 21, 1995, instituted criminal process against Lu with malice and without probable cause. The termination of both criminal proceedings were in favor of Lu.

Request for Relief

37) WHEREFORE, plaintiff demands (A) against defendants, compensatory damage (threefold when laws so dictate) and punitive damage (in the 42 USC § 1983 action), (B) equity relief enjoining defendant John J. Clough from furhter *ex parte* communications and from further involvement in No. 95-CV-590, while said action is still in Dorchester District Court, and (C) other relief as this Honorable Court deems just.

Jury Demand

38) Plaintiff requests jury trial on all issues.

Plaintiff: Friedrich Lu, pro se
Signed:
Date: June 18, 1996
Address: 123 Sydney Street #3, Dorchester, MA 02125

CHOATE, HALL & STEWART
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
EXCHAANGE PLACE
53 STATE STREET
BOSTON, MASSACHUSETTS 02109-2891
TELEPHONE (617)248-5000
FACSMILE (617) 248-4000
TELEX 49615860

August 27, 1996

BY OVERNOGHT MAIL
Mr. Friedrich Lu
123 Sydney Street #3
Dorchester, MA 02125

Re: Lu v. Ravida, et al., U.S. District Court, District of Massachusetts
C.A. NO. 96-11253-REK

Dear Mr. Lu:

I am planning to file next Tuesday, September 2, 1996, a motion to dismiss the Complaint with respect to Hong T. Nguyen and Tam Thi Ngo on the ground that the facts you allege do not state a legal claim against them. I stand ready to confer with you about narrowing the issues on such a motion. Since you are not represented by counsel in this matter, I do not wish to initiate a telephone call to you without your permission. If you are interested in conferring, please contact me on Friday, August 30. If I do not hear from you, I will conclude that you do not wish to confer about narrowing the issues at this time.

In order to help avoid miscommunication regarding this matter, I request that you do not come to visit me in person. Instead, I request that you communicate with me in writing as much as possible, and by telephone when appropriate.

In addition, as you know, this letter and any further communication initiated by me is strictly in my capacity as attorney for Hong T. Nguyen and Tam Thi Ngo. As I am a defendant in this action, you should direct all communication relating to my capacity as a party defendant to my attorney Robert M. Buchanan, Jr. of this office.

Vey Truly Yours,
Michael H. Bunis /s/
Michael H. Bunis

cc: Robert M. Buchanan, Jr., Esq.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FRIEDRICH LU,	)	
Plaintiff	)	
V.	)	CIVIL ACTION
PAUL RAVIDA, ET AL.,	)	NO. 96-11253-REK
Defendants	)	
	)	

Courtroom No. 11
Federal Building
Boston, MA 02109
3:30 p.m., Thursdaay
December 5, 1996

Hearing on Motions

Before: THE HONORABLE RO ERT E. KEETON
UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:
Mr. Friedrich Lu, 123 Sydney Street, Dorchester, MA 02125,
appearing pro se.
DONNELLY, CONROY & GELHAAR (by Andrew Horne, Esquire),
176 Federal Street, Boston, MA 02110
on behalf of the Defendants Peter Gelhaar and Donnelly, Conroy & Gelhaar.

Marie L. Cloonan
Federal Court Reporter
1690 U.S.P.O. & Courthouse
Boston, MA 02109 - 617-426-7086
Mechanical Steno - Transcript by Computer

APPEARANCES CONTINUED:

CHOATE, HALL & STEWART(by Robert M Buchanan, Jr., Esq.),
Exchange Place, Boston, MA 02109
on behalf of the Defendant, Michael H. Bunis, Kathleen M. Genova and Chaoaate, Hall & Stewart.

CHOATE, HALL & STEWART(by Michael H. Bunis, Esq.),
Exchange Place, Boston, MA 02109
on behalf of Paul Ravida, Donna McDonough, Hong T. Nguyen, Thuc V. Nguyen, Chi Thuykim Nguyen and Nam South Nguyen.

Poppel & Pingitore (by Matthew P. Poppel, Esquire),
8 Faneuil Hall Marketplace, Boston, MA 02019,
on behalf of IRI Software and John P. Joy.

Marie L. Cloonan
Federal Court Reporter
1690 U.S.P.O. & Courthouse
Boston, MA 02109 - 617-426-7086
Mechanical Steno - Transcript by Computer

MR. LU: I understand.
THE COURT: Thirty-three is against Gelhaar and Donnelly, your motion against them. There's also 32, which was a motion for Rule 11 sanction. All of those have been denied.
MR. LU: Okay, but --
THE COURT: Now, also there's a motion to disqualify counsel.
MR. LU: Yes.
THE COURT: Docket No. 22. You're not pressing that any longer, are you?
MR. Lu: I do.
THE COURT: Well now, what does that motion assert? Whose counsel are you trying to disqualify and on What basis?
MR. Lu: Right now, possibly it would be moot.
THE COURT: All right.
MR. Lu: But, but -- because this court has dismissed the federal court of action. But my point is that the co-defendant should not represent each others and that because they are a lot of case law against them.
THE COURT: All right.
Now, I'm not going to dismiss that as moot. I'm denying it. That is the motion in which you're claiming that two defendants or law partners cannot -- one cannot

represent the other. you're just wrong about that.
MR. LU: No, no. What I said in my motion is that one defendant could not represent the other defendants.
THE COURT: Mr. Lu, listen carefully to me. When you have sued a lawyer, that lawyer my both represent himself and another defendant in the case, whom you've sued, in that same law firm. Now, if you think otherwise, you're just wrong. So I'm denying that motion of yours, that's Docket No. 22, to disqualify counsel. It's just wrong, plain wrong. No basis for it at all.
MR. Lu: The Court means where both are defendants, I'm still wrong. One --
THE COURT: I have, without qualification, denied your motion to disqualify counsel, your Docket No. 22.
MR. LU: Thank you very much.
THE COURT: All right.
Now, there are also a few matters that I want to clean up here that may not even be of interest to defendants. They may not be aware of them.
Mr. Lu: But, all right, in that -- it is not the defendants or nobody should know at this moment and so --
THE COURT: What?
Mr. Lu: It seems to me that nobody should know about that.
THE COURT: Now, wait a minute. I'm not disclosing

something that I should not disclose. I'll say something about that on the record, without disclosing the content of it, because there's a problem with that. But, right now, I'm speaking about something entirely different.

Your motion to appoint process server, Docket No. 8, is denied. That's not a matter -- I don't appoint process server under state law provisions. This is the federal court. I follow the federal procedures. And there's no basis to support that motion. Docket No. 8 is denied.

Your motion for leave to file lis pendens, Docket No. 4, is denied, having determined that the underlying basis for the claim is not violated. Certainly, I should not be allowing the motion for a filing lis pendens.

Now, let me just make quick check here if I've Missed any motions.

There's one more -- two more matters I want to deal with. Now,, one of those is that you have filed certain matters under seal. They are being kept under seal. But I call your attention to the fact that there's more of a problem than just what you're asking for in that motion under seal.

You are seeking by that motion to add other claims that are not appropriately joined with the claims that you filed in your original complaint. So it is subject to

dismissal probably on grounds of improper joinder. But I will not take that action today because there are other parties involved as well whose interests are at stake. So I'm just calling your attention to that.

And there is one more matter I think I must deal with. I cannot allow permit the processes of this Court for the administration of justice to be misused and abused in the way you have done in this case and, for that reason, I will enter another order and I will ask the clerk to hand you and other counsel, if they wish to see it, copies of the draft that I have prepared. And if you want to be heard on it before I rule on it, I'll hear you.

(Pause.)

THE COURT: Do you wish to be heard further, Mr. Lu?

MR. Lu: I just want to seek a clarification about the second paragraph, No. 4, not to file in this court or any other court any other case based on any of the same allegation or circumstances as plaintiff have alleged in this civil actions.

But since this Court have allowed me to pursue the state --

THE COURT: The one that you've already filed in the District Court in Dorchester. This doesn't stop that case. This stops you from filing another action anywhere in

which you are making the same allegations.

You see, the problem is, you have been in several different courts, raising some of the same questions over and over again, That's got to stop. That's improper.

This order will remain in effect until I make a further order. Now, I will make a further order before I finish with this case. I have other things to deal with. And I'll hear you at that time as to whether I should in any way modify that. But you must understand that you are impairing the administration of justice in this court and in the courts of the Commonwealth by filing claims that are insupportable and that's got to stop.

I want you to understand that you need a to get a lawyer's advice to tell you about the way you're misunderstanding the law or else you need to spend more time yourself before you cause the waste of public and private resources of filing frivolous claims. That's what this is designed to do.

Now, it's not meant to be a permanent order at this point. I'll consider it further before -- whether I should impose any such order as this beyond the duration of this case on the docket of this court.

There are a number of precedents in the First Circuit and in the Court's decisions of myself and other judges of this Court for orders of this kinds to be put into

effect on a longer term basis if that's the only way to stop the abuse of process. But I'm not making that order.

I'm simply saying now, stop it for the present, until we get everything done in this case. I'll consider it with you when that is done, before I close this case, what kind of order I should have in effect beyond this.

MR. Lu: I did put money on my mouth, I did pay all the filing fees.

THE COURT: Oh, yes, I understand that. I understand that. But paying a filing fee does not authorize you to file frivolous claims.

You see, the defendants have waived their claims for attorneys' fees. If they hadn't done that, I would very likely have concluded that they were entitled to some sanctions against you because it's costing them money and time to be here to defend against your frivolous claims. That's got to stop.

You've got to understand that the doors of the courthouses are open for the administration of justice and not to be abused by somebody who is filing false claims.

MR. Lu: First, It wasn't and I don't -- I am not appreciative of their refusal to seek attorney fee. Because, I thought, from my point of view, it is frivolous and --

THE COURT: It is what?

MR. LU: Their requests for attorney fee were frivolous. But --

THE COURT: No. You see, what I'm telling you is, the reason I'm doing this is -- you perhaps haven't understand it, I want to be sure you understand -- that the court are open for the administration of justice and not for the filing of false claims. So you've got to more careful about filing false claims. That's the message I'm giving you.

No, I don't mean this to be a permanent order. I have further proceedings in this case before it can be closed. But I expect to keep it in effect for the time being.

MR. Lu: But, maybe it means -- it means I do believe that I'm doing this for the common good. And I respectfully -- just for one second. Actually, the -- I was told Count 3 for the state action, under state constitution, it did not include it in the Dorchester District Court actions. And if the amendment is not allowed --

THE COURT: Let me suggest to you the following. That if you want to ask permission to file some particular claim, you prepare a motion requesting permission to do that and you hand it to the clerk and the clerk will mark it "received" and deliver it to me under the last paragraph of this order. And if I find it appropriate, I will then allow

the clerk to file it and I will rule on it.

So if you think you have good grounds for and want to file such a claim in another court, this will not stop you from requesting my permission to modify this order to do that.

MR. LU: Okay. But I just want to say that if the Court chose not to decide on that state action --

THE COURT: That's correct. That's correct.

MR. LU: and just in case the Dorchester District Court would not allow my amendment, then I want to file the action to include those counts. Thank you very much.

THE COURT: All right.

Now, I will sign this order. And let me have back one of those copies so I can sign it and the clerk can deliver it to Mr. Lu in signed form.

MR. Lu: In the meantime, for procedural purpose, I wish to take exception.

THE COURT: Yes, that may be noted on the record.

MR. LU: Thank you very much.

THE COURT: All right.

Now, the clerk calls my attention to the fact that there were more motions, Dockets No. 37, your motion to extend time to November 30th for service. That time has passed. That motion is now moot. That one is dismissed.

Also, your Docket No. 44 is a motion to extend time to 12/31/96 for service. That one is denied. If it related to any of the defendants that are already -- whose motions have already been allowed, of course, it has no effect. But, if it relates to the other matter, then I'm not authorizing any further proceedings on that, though I'm not closing that matter now because there is another party in interest there.

Now, let me say to all of you that, of course, all of the orders that I have entered today have been interlocutory and I cannot close this case yet because I have this other matter that's under seal that you're not privy to at this point, that will have to be dealt with before I can close the case.

My expectation is that that can be dealt with fairly expeditiously. I've got a request not to deal with it for another period of weeks. But I'm expecting that will be dealt with promptly.

And it seems to me, rather than having a lot of motions for separate 54(b) judgments, the most sensible thing to do is to hold on. If I haven't disclosed the rest of the case by sometime in January or so, and you have special reasons for asking for separate final judgments, then, of course, it's your right to file and I'll consider them. But I hope that that won't be necessary.

Now, is there any other matter that anyone is aware of that we need to deal with in this case today?

MR. BUNIS: Your honor, excuse.

THE COURT: Yes.

MR. BUNIS: I don't mean to bother you, but there is a matter that there are three defendants who I don't believe have filed motions to dismiss, that the case goes on against them, as I understand.

THE COURT: Yes, and they probably hadn't been served. Who are the three defendants?

MR. BUNIS: I believe they are Paul Ravida, Donna McDonough and Michael Van Dang.

THE COURT: All right.

Now, Mr. Lu, do you wish to proceed, still, against those defendants?

MR. LU: Ah --

THE COURT: You have not effected service against them, have you?

MR. Lu: No, not yet.

THE COURT: Well, now the time is running when I should dismiss for failure to effect service. But what do you want to do about those?

Let me put another question to you. Did you make claims against them that are not subject to being dismissed for the same reasons I have been ruling on as to other

claims today? If so, you better reconsider. You've got an opportunity to withdraw them now, instead of possibly subjecting yourself to sanctions if they come in and ask for them.

MR. LU: I'd have to say that they are basically based on the same theories, which this Court have reject, but I do not wish to withdraw and --

THE COURT: All right. Then here's what I'll order. That I expect to dismiss those claims unless by January 15th, 1997 you show cause why I should not for essentially the same reasons we've been talking about as to other claims, plus the failure to effect service within 120 days after filing a lawsuit.

What was the date ion which you filed the civil action?

MR. Lu: It was June 18th.

THE COURT: So the 120 days will have expired. So you'll have until January 15th.

Now, I may be seeing you before that by notice given to you with respect to the other part of the case. If not, that's another matter, that if you want to file some submission showing cause, you can prepare that, present it to the clerk. The clerk will present it to me, under the last paragraph, and I will consider and determine whether it should be filed and dealt with on the docket.

MR. LU: I just wish to say that those three defendants have consistently refused to accept the process, and I believe that the Court does have the authority to allow my motion to --

THE COURT: I have the authority to allow it for good cause. I'm not ruling on it today. I'm giving you the opportunity, on or before January 15th, either to effect service or to show me good cause and also show me good cause why I shouldn't dismiss it for the reasons that I have dismissed other cases today. Because, even if the allegations are accepted as true, they fail to state a claim on which relief would be granted by this Court. So I'm not ruling on that at the present time.

MR. LU: I understand.

I just -- when I said that a minute ago I thought the Court had said that the Court would not have no authority to appoint process server by the state.

Thank you very much.

THE COURT: All right. We will be recess.

(Whereupon the hearing was concluded)

CERTIFICATE

I, Marie L. Cloonan, Official Reporter of the United States District Court, do hereby certify that the foregoing transcript, from page 1 to page 23, constitutes to the best of my skill and ability a true and accurate transcription of my stenotype notes taken in the matter of Civil Action No. 96-11253-REK, Friedrich Lu Vs. Paul Ravida, ET AL.

Maria L. Cloonan /s/